

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

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BABY DOE, A CITIZEN OF AFGHANISTAN :
CURRENTLY RESIDING IN NORTH :
CAROLINA, BY AND THROUGH NEXT : CIVIL ACTION NO. 3:22-CV-49
FRIENDS, JOHN AND JANE DOE;AND JOHN :
AND JANE DOE, CITIZENS OF AFGHANISTAN : PUBLIC VERSION
AND LEGAL GUARDIANS OF BABY DOE, : REDACTED
:
Plaintiffs, :
:
v. :
:
JOSHUA MAST, STEPHANIE MAST, RICHARD :
MAST, KIMBERLEY MOTLEY, AND AHMAD :
OSMANI, :
:
Defendants, :
:
and :
:
UNITED STATES SECRETARY OF STATE :
ANTONY BLINKEN AND UNITED STATES :
SECRETARY OF DEFENSE GENERAL :
LLOYD AUSTIN, :
:
Nominal Defendants. :
:
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**PLAINTIFFS’ RESPONSE IN OPPOSITION TO DEFENDANT RICHARD MAST’S
RESPONSE IN SUPPORT OF MOTION TO STAY DISCOVERY, AND SUR-REPLY IN
OPPOSITION TO DEFENDANTS JOSHUA MAST AND STEPHANIE MAST’S
MOTION TO STAY DISCOVERY**

Plaintiffs file this response to the “response” of Defendant Richard Mast (“R Mast”) (ECF No. 251) to the Motion to Stay Discovery (ECF No. 237) filed by Defendants Joshua Mast and Stephanie Mast (“J&S Mast”), and this sur-reply to the Reply in Support of Motion to Stay Discovery (ECF No. 259) filed by J&S Mast. Plaintiffs do so not to re-argue the merits of the

Motion to Stay Discovery – Plaintiffs rely on their Opposition brief (ECF No. 250) for that purpose – but to respond to mischaracterizations of circuit court proceeding made in the filings.

Specifically, J&S Mast assert in their Reply that “the Fluvanna Circuit Court has already determined the Does are not biologically related to Baby Doe, have never been her adoptive parents, and are not her legal guardians under Afghan law.” Reply at 4-5. Tellingly, J&S Mast do not cite to any ruling from the circuit court in support of these statements. Nor could they. Contrary to their assertion, the circuit court held that John and Jane Doe “*were de facto parents of this child*[.]”¹ *A.A. and F.A. v. J.M. and S.M.*, CL22000186-00, May 3, 2023 Order (“May 3 Order”) at 4 (ECF No. 211, Exh. 1) (emphasis added).

To the extent J&S Mast base their assertion in reliance on a November 18, 2022 opinion issued by a previous circuit court judge who presided over that matter (and the original adoption proceeding) and has since retired, that opinion explicitly states that its “findings and rulings” “may be considered or not considered” by the succeeding judge, “and any pre-trial finding or ruling may be revised and modified by the trial judge at a later time.” *A.A. and F.A. v. J.M. and S.M.*, CL22000186-00, Nov. 18, 2022 Order (“November 18 Opinion”) at 1 (ECF No. 113, Exh. 1). Indeed, the November 18 Opinion expressly acknowledged that, “[w]ith all of the evidence in this case . . . the Court is not confident that it has remembered all of the evidence presented completely” and expressly invited the parties to “file with the Court . . . any requested corrections or revisions of the recited facts or evidence if based on references to the transcript of testimony or exhibits.” *Id.* at n. 9. Plaintiffs did so, submitting 50 pages of corrections to

¹ Indeed, the circuit court went further in a written timeline it provided to the parties at the March 30, 2023 hearing, in which it noted that A.A.’s father “*[REDACTED]*,” which “*[REDACTED]*.” *A.A. and F.A. v. J.M. and S.M.*, CL22000186-00, March 30, 2023 Court Timeline, at 1 (attached as Exh. 1 (under seal)).

inaccurate statements made in the November 18 Opinion about the evidence presented in the circuit court. *A.A. and F.A. v. J.M. and S.M.*, CL22000186-00, March 24, 2023 Petitioners’ Requested Corrections to The Court’s Findings and Rulings. And the circuit court judge now presiding over that proceeding acknowledged his concerns about the November 18 Opinion before issuing its final May 3 Order, stating that he was reviewing the “previous order and findings in the case” and “[t]here are certain of those findings that I agree with, and there are certain of those findings I’m equivocal on[.]” *A.A. and F.A. v. J.M. and S.M.*, CL22000186-00, January 30, 2023 Hr’ng Transcript at 128:4-9 (attached as Exh. 2). Following those statements, the circuit court issued the May 3 Order that vacated the adoption order.

Amazingly, J&S Mast even assert that that “the Fluvanna Circuit Court rejected” the “premise” that “the Masts do not have a right to have custody of Baby Doe because they ‘abducted’ a child.” ECF No. 259 at 6. Yet, the circuit court ***vacated the adoption order***, finding that it was *void ab initio* based on extrinsic fraud and that the Does were deprived of due process. *See* May 3 Order.

Finally, the arguments made by both J&S Mast and R Mast in support of a stay mirror those they made in support of their pending motions to dismiss. In both, they argued that the supposed similarity of the subject matter addressed in this case and the circuit court proceeding mandated application of the “domestic relations exceptions,” asserting that this Court lacked jurisdiction to address matters of domestic relations. *See* ECF Nos. 85 at 1; 88 at 8-9. It is worth noting, though, that, in the Virginia Court of Appeals, J&S Mast (with R Mast as their counsel) argue that “[a]doption proceedings . . . ***are not domestic relations matters***” (and, thus, they argue, are statutorily subject to interlocutory appeal). *See J.M. and S.M. v. A.A. and F.A.*, Case

Nos. 1855-22-2, 0940-23-2, 0940-23-2, & 0953-23-2, July 14, 2023, Response to Notice of Supplemental Authority at 1 (attached as Exh. 3) (emphasis added).

July 25, 2023

Respectfully submitted,

/s/ Maya Eckstein

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of July 2023, I filed the foregoing with the Court's electronic case-filing system, thereby serving all counsel of record in this case.

By: /s/ Maya Eckstein
Maya M. Eckstein (VSB No. 41413)